

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES S. SHELBY and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Okla.

*Docket No. 97-188; Submitted on the Record;
Issued September 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on or after May 31, 1994 causally related to his February 17, 1966 employment injury.

The Board has duly reviewed the case record and finds that appellant has not established that he sustained a recurrence of disability on or after May 31, 1994 causally related to his February 17, 1966 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained second and third degree burns of his left forearm, hand, face and eyes due to an explosion, which occurred on February 17, 1966. By decision dated June 18, 1968, appellant received a schedule award for a 25 percent permanent partial loss of use of his left arm and a 25 percent permanent loss of vision bilaterally.

On January 4, 1995 appellant filed a claim alleging a recurrence of disability on May 31, 1994, causally related to his February 17, 1966 employment injury.¹ By decision dated August 1, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between the injury and the claimed condition or disability. By decisions dated December 11, 1995 and July 1, 1996, the Office denied appellant's requests for reconsideration.

Where an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a

¹ Appellant retired from the employing establishment in 1990.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In support of his claim for a recurrence of disability, appellant submitted a report dated May 5, 1995, from Dr. Gary R. Fox, an optometrist. Dr. Fox noted that appellant sustained damage to his eyes in 1966 from an explosion. He diagnosed amblyopia and exotropia, mild corneal opacity, a macular scar, hyperopic astigmatism and presbyopia. Dr. Fox stated, “Based on clinical findings, there was no evidence that the injury from 1966 would have been related to any changes in refraction or vision of recent onset.” As Dr. Fox does not attribute any of the diagnosed conditions to appellant’s 1966 employment injury, his report is of little probative value.

In a report dated March 19, 1996, Dr. Gary W. Harris, a Board-certified ophthalmologist, discussed appellant’s employment injury and prior history of an amblyopic right eye. He diagnosed macular degeneration, anisometropic amblyopia of the right eye and a retained subconjunctival foreign body in the left eye. In a letter of the same date, Dr. Harris referred appellant to Dr. Ronald M. Kingsley, a Board-certified ophthalmologist, for an examination. Dr. Harris noted that there were “questions about [appellant’s] present eye findings being work related” and further indicated that he did not believe that the subconjunctival carbon particles in his left eye affected his vision. As Dr. Harris does not offer an opinion as to whether appellant has any current condition or disability causally related to his accepted employment injury, his opinion is insufficient to meet appellant’s burden of proof.

In a report dated April 3, 1996, Dr. Kingsley noted that appellant was diagnosed with an atrophic macular scar in 1967, which “may have been due to the explosion, but no definitive answer could be given.... The lesion may have represented an adult vitelliform scar, but also could have been a macular scar, secondary to injury.” On examination Dr. Kingsley found that appellant’s atrophic foveal scar was unchanged and that the etiology was uncertain but “could be related to trauma.” He further found no significant macular pathology. Dr. Kingsley’s finding that appellant’s atrophic macular scar “could be related” to trauma is speculative and inconclusive in nature and thus of diminished probative value.⁴

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.⁵ To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant’s diagnosed conditions and present medical rationale in support of his or her opinion.

³ *Id.*

⁴ *Connie Johns*, 44 ECAB 560 (1993).

⁵ *Donald W. Long*, 41 ECAB 142 (1989).

Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decisions of the Office of Worker's Compensation Programs dated July 1, 1996 and December 11, 1995 are hereby affirmed.

Dated, Washington, D.C.
September 25, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member